

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN THOMAS ENTLER,  
Plaintiff,  
v.  
CC3 DAVID MCKINNEY AND HAL  
SNIVELY,  
Defendants.

NO. CV-06-5006-JPH

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

Magistrate Judge Hutton filed a Report and Recommendation on January 15, 2008, recommending that Defendants' motion for summary judgment (Ct. Rec. 56) be granted and that Plaintiff's first amended complaint be dismissed with prejudice. (Ct. Rec. 99.) On January 28, 2007, Plaintiff filed objections to the Report and Recommendation. (Ct. Rec. 100.) Defendants filed a response to Plaintiff's objections on February 6, 2008. (Ct. Rec. 106.)

Plaintiff alleges a retaliation claim against Defendant McKinney claiming Defendant McKinney refused to provide him legal copies and gave him an incorrect amount of legal copies. (Ct. Rec. 18.)

The magistrate judge correctly relied upon a string of Ninth Circuit retaliation cases to support his finding that Defendant McKinney's actions with respect to Plaintiff's legal copy requests,

1 as described in the Report and Recommendation, were not the type of  
2 actions that give rise to a cognizable claim for relief for  
3 retaliation. (Ct. Rec. 99 at 14.)

4 As noted in the Report and Recommendation, Plaintiff did not  
5 assert that he was completely denied the opportunity to have legal  
6 copies made. (Ct. Rec. 99 at 13.) Plaintiff further did not  
7 contend that, as a result of Defendant McKinney's actions regarding  
8 the photocopy requests, he actually missed a filing deadline which  
9 was not accommodated by the courts or that he was prevented from  
10 pursuing a claim against prison officials. (Ct. Rec. 99 at 13.)  
11 Accordingly, the undisputed facts demonstrate that Plaintiff was not  
12 denied the opportunity to have his legal copies made, he was simply  
13 not allowed to direct the exact time his copy demands would be met.  
14 Furthermore, as indicated in the Report and Recommendation, the  
15 photocopy delays of which Plaintiff complains can be attributed to  
16 many factors, including Plaintiff's own lack of diligence, as well  
17 as a malfunctioning copy machine and Defendant McKinney's schedule,  
18 vacation time, and sick leave. (Ct. Rec. 59 ¶¶ 18-31; Ct. Rec. 99  
19 at 15.). The undisputed facts show that Defendant McKinney's  
20 actions with respect to the photocopying requests were not clearly  
21 retaliatory; therefore, Plaintiff has failed to establish a  
22 retaliation claim in this regard.

23 Plaintiff also argues that Defendant McKinney violated his  
24 constitutional rights by being rude, intimidating, and aggressive.  
25 (Ct. Rec. 18). As indicated in the Report and Recommendation, the  
26 facts as alleged by Plaintiff regarding Defendant McKinney's  
27 behavior do not establish a constitutional violation. (See, Ct.  
28 Rec. 99 at 15-16.) The undisputed facts regarding Defendant

1 McKinney's conduct do not support a constitutional claim.

2 Plaintiff additionally alleges retaliation claims against  
3 Defendants asserting that Defendants threatened to transfer and  
4 subsequently transferred him to a different facility based on his  
5 grievance filings. (Ct. Rec. 18.)

6 The undisputed facts do not demonstrate that Defendant Snively  
7 threatened Plaintiff with an unfavorable transfer in retaliation for  
8 Plaintiff's pursuit of grievances. As noted in the Report and  
9 Recommendation, Defendant Snively was aware that Plaintiff had  
10 requested protective custody and wanted to be housed in the SHU.  
11 (Ct. Rec. 59 ¶¶ 29-30.) It was explained that Plaintiff's demand  
12 for another counselor, if granted, would require his transfer out of  
13 the SHU. (Ct. Rec. 59 ¶ 29.) Accordingly, Defendant Snively's  
14 comment to Plaintiff informing him to "[w]atch your demands, you may  
15 not like the outcome" (Ct. Rec. 59 ¶ 34), was a warning to Plaintiff  
16 that assignment to a new counselor would result in an unwanted  
17 outcome, a transfer that would not be favorable to Plaintiff if  
18 Plaintiff's custody level had not changed. (Ct. Rec. 99 at 18.)  
19 Defendant Snively's remark was not a threat of transfer based on  
20 Plaintiff's grievance filings.

21 The undisputed facts reveal that Plaintiff was transferred from  
22 the SHU because he was promoted from medium custody to long-term  
23 minimum custody. (Ct. Rec. 59 ¶¶ 36-41.) Plaintiff fails to  
24 demonstrate that his promotion from medium custody to minimum  
25 custody, and subsequent transfer based on this custody level  
26 promotion, was an adverse action orchestrated by Defendants. The  
27 facts do not demonstrate that retaliation was a substantial or  
28 motivating factor behind Plaintiff's transfer.

Finally, although the magistrate judge did not need to address Defendants' arguments that they are entitled to qualified immunity from this lawsuit, the magistrate judge additionally noted that the claims against Defendants were barred by qualified immunity. There is no clearly established right to demand immediate photocopies or to not be transferred when custody levels are changed. Accordingly, as indicated in the Report and Recommendation, Defendants would additionally be entitled to qualified immunity in this case.

Having reviewed the January 15, 2008, Report and Recommendation (Ct. Rec. 99), Plaintiff's objections thereto (Ct. Rec. 100), and Defendants' response to Plaintiff's objections (Ct. Rec. 106), the January 15, 2008, Report and Recommendation is **ADOPTED** in its entirety.

14 ||| Based on the forgoing, **IT IS HEREBY ORDERED:**

15       1. Defendants' motion for summary judgment (**Ct. Rec. 56**) is  
16 **GRANTED** and Plaintiff's first amended complaint (**Ct. Rec. 18**) is  
17 **DISMISSED, with prejudice.**

18 | 2. Judgment shall be entered for **Defendants**.

19       **IT IS SO ORDERED.** The District Court Executive is directed to  
20 enter this order, forward copies to Plaintiff and counsel for  
21 Defendants, and **CLOSE** the file.

22 || **DATED** this 25<sup>th</sup> day of February 2008.

S/ Edward F. Shea  
EDWARD F. SHEA  
UNITED STATES DISTRICT JUDGE

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